

IT 95-16  
Tax Type: INCOME TAX  
Issue: Non-Filer (Income Tax)

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE HEARINGS DIVISION  
CHICAGO, ILLINOIS

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DEPARTMENT OF REVENUE      )  
STATE OF ILLINOIS         )  
                           )  
          v.               )   SSN:  
                           )  
XXXXXX                   )  
                           )   Wendy S. Paul  
                           )   Admin. Law Judge  
Taxpayer(s)              )  
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RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter is before this administrative tribunal as a result of a timely protest on behalf of XXXXX (deceased) and XXXXX (hereinafter, "Taxpayers") by XXXXX to a Notice of Deficiency issued to them on March 21, 1991. The basis of the Notice is the determination of the Illinois Department of Revenue (hereinafter, the "Department") that Taxpayers had failed to advise the Department of a final federal change which increased their federal adjusted gross income for tax year ended December 31, 1986. The Notice proposed an increased tax liability and penalties under 35 ILCS 1005 for failure to pay the entire tax liability by the due date of the return.

In their protest, Taxpayers stated that they had filed a new federal amended income tax return (Form U.S. 1040X) which had been accepted upon reconsideration by the Internal Revenue Service. Taxpayers did not request an evidentiary hearing. Accordingly, this matter is being decided based upon the documents contained in the Department's file, including all documentation submitted by Taxpayers.

The issues to be decided are whether Taxpayers are liable for Illinois

income tax as a result of a final federal change which increased their federal adjusted gross income and, if so, whether they are additionally liable for penalties pursuant to 35 ILCS 5/1005 for the subject tax year.

FINDINGS OF FACT:

1. For the subject tax year, a final federal change was made to Taxpayers' federal adjusted gross income. Dept. Ex. No. 1.

2. The federal change increased Taxpayers' Illinois tax liability. Dept. Ex. No. 1.

3. Taxpayers did not report such change to the Department pursuant to 35 ILCS 5/506(a) and (b). Dept. Ex. No. 1

4. Taxpayers did not pay the increased Illinois tax liability resulting from such final federal change. Dept. Ex. No. 1

5. Taxpayers filed a timely protest. Dept. Ex. No. 2

6. Taxpayers, in their protest, did not deny that there had been a federal change, but contested its finality by alleging that the Internal Revenue Service had reconsidered the matter and that it had accepted a new federal amended return filed by Taxpayers. Dept. Ex. 2

7. Despite Departmental requests, Taxpayers did not supply the Department with a copy of the amended return or any documentation to support their claim that the amended return referred to in the protest had been accepted by the Internal Revenue Service.

CONCLUSIONS OF LAW: A person is required to notify the Department of all changes to their federal taxable income which affects the computation of such person's Illinois base income for the same taxable year. 35 ILCS 5/506(b).

Here, Taxpayers did not contest the fact that there was a federal change which increased their Illinois base income. They alleged, however, that the change was not final and that it had been superseded by an amended federal income tax return that had been accepted by the Internal Revenue

Service. Taxpayers did not offer any documentation to support their allegation that the federal change was not final. They did not provide a copy of the amended federal income tax return or any documentation to reflect that such a return, if filed, had been accepted by the Internal Revenue Service.

The Notice of Deficiency is prima facie correct so long as its proposed adjustments meet some minimum standard of reasonableness. *Vitale v. Illinois Department of Revenue*, 118 Ill. App. 3d 210 (3rd Dist.1983). In order to overcome this prima facie correctness, the taxpayer must present competent evidence that the proposed adjustments are incorrect. *Masini v. Department of Revenue*, 60 Ill. App. 3d 11 (1st Dist.1978). The taxpayer has failed to meet that burden in this case.

35 ILCS 5/1005 imposes a penalty for failure to timely pay the tax due unless such failure is due to reasonable cause. The existence of reasonable cause justifying abatement of a penalty is a factual determination that can only be decided on a case by case basis (*Rorabaugh v. United States*, 611 F. 2d 211 (7th Cir.,1979)) and has generally been interpreted to mean the exercise of ordinary business care and prudence (*Dumont Ventilation Company v. Department of Revenue*, 99 Ill. App. 3d 263 (3rd Dist.1981)). The burden of proof is upon the taxpayer to show by a preponderance of the evidence that it acted in good faith and exercised ordinary business care and prudence in providing for the timely payment of its tax liability. Here, Taxpayers presented no such evidence and there is nothing in the file to warrant an abatement of the penalties imposed pursuant to 35 ILCS 5/1005.

Therefore, based upon the evidence of record, it is my recommendation that the Notice of Deficiency be upheld.

Wendy S. Paul

Administrative Law Judge

April 17, 1995